

Litigation in Bankruptcy Court

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The United States Bankruptcy Code provides that when an individual files bankruptcy the commencement or continuation of a judicial or administrative proceeding against such individual (“debtor”) is automatically stayed; however, a bankruptcy filing does not operate as an automatic stay of the commencement or continuation of a criminal proceeding against the debtor. *See*, 11 U.S.C. § 362(a) and (b). Despite these automatic stay provisions in the Bankruptcy Code, in certain instances, litigation does ensue in bankruptcy court. When litigation occurs in bankruptcy court it arises in one of two forms: 1) an adversary proceeding; or 2) a contested matter. This article briefly sets forth the differences between the two forms and provides a few examples of each. Nevertheless, this article is intended to be illustrative only and not an exhaustive list.

A bankruptcy case begins when a bankruptcy petition is filed by the debtor. This is known as the “main bankruptcy case.” An adversary proceeding is a separate lawsuit, filed in bankruptcy court, arising out of the main bankruptcy case. An adversary proceeding in bankruptcy court is governed by Part VII of the Federal Rules of Bankruptcy Procedure, which sets forth examples of matters that must be brought by an adversary proceeding. The first document filed in an adversary proceeding is an “adversary proceeding complaint.” The caption of an adversary proceeding complaint includes the name of the plaintiff, the name of the defendant, and the main bankruptcy case caption, which sets forth the name of the debtor. A separate adversary proceeding case number is assigned to the adversary proceeding, after the complaint is filed with the bankruptcy court; thereafter, the adversary proceeding proceeds forward as a separate and distinct action from the main bankruptcy case. Adversary proceedings may be served by first class mail and do not require personal service.

In certain instances, an adversary proceeding must be filed in order for the specific relief sought to be obtained from the bankruptcy court. For example, if a creditor objects to the debtor receiving a discharge from the bankruptcy court then the party objecting must file an adversary proceeding. *See*, 11 U.S.C. § 523. Similarly, if a creditor objects to the dischargeability of a specific debt then the party objecting must file an adversary proceeding. *See*, 11 U.S.C. § 727. In addition, a debtor-in-possession, or trustee may bring an adversary proceeding against third parties for, including but not limited to, setting aside a fraudulent transfer or preferential transfer. *See*, 11 U.S.C. §§ 547 and 548.

A contested matter is distinguishable from an adversary proceeding in that a contested matter is filed in the main bankruptcy case with the main bankruptcy case caption. It is not a separate and distinct lawsuit. A contested matter in bankruptcy court is governed by Rule 9014 of the Federal Rules of Bankruptcy Procedure. A contested matter encompasses any actual dispute other than an adversary proceeding. *See, In re Spring Ford Indus., Inc.*, 2004 WL 231010, 2 (Bankr. E.D. Pa. 2004) (*explaining that Rule 9014 does not define “contested matter,” but the advisory committee notes make clear that a contested matter encompasses any actual dispute other than an adversary proceeding*). A contested matter may be brought by motion or application.

Some examples of contested matters include the following: a creditor seeking to continue a foreclosure action may file a motion for relief from stay with the bankruptcy court, pursuant to 11 U.S.C. § 362; the bankruptcy trustee may file an objection to exemptions if the debtor declared in his or her bankruptcy petition exemptions over the allowed statutory amounts; or a debtor, holding a lease, may file a motion to assume or reject executory contracts depending on whether the debtor wishes to continue the lease or not, pursuant to 11 U.S.C. § 365.

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